

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-139607-001 DT

04/24/2013

HONORABLE JOSEPH KREAMER

CLERK OF THE COURT
S. Yoder
Deputy

STATE OF ARIZONA

KRISTIN SHERMAN
JONATHON SCOTT DUTCHER

v.

JUSTIN OTIS MCMAHAN (001)

VICTORIA ELISABETH WASHINGTON
GARRETT W SIMPSON

CAPITAL CASE MANAGER

MINUTE ENTRY

CR2007-133812-001 Jesus Arturo Martinez, Jr.
CR2009-160953-001 Rudolph John Cano, Jr.
CR2010-007882-001 Jasper Phillip Rushing
CR2010-007912-001 Darnell Reuna Jackson
CR2010-007912-002 Eldridge Auzele Gittens
CR2010-048824-001 James Clayton Johnson
CR2010-168096-001 Craig Michael Devine
CR2011-005473-001 Abel Daniel Hidalgo
CR2011-008004-001 Dennis Michael Levis
CR2011-008004-002 Thomas Michael Riley
CR2011-133622-001 Jesus Busso-Estopellán
CR2011-138281-001 Jason Neil Noonkester
CR2011-140108-001 Jose Alejandro Acuna Valenzuela
CR2011-150239-001 Ryan William Foote
CR2011-151833-001 Jonathan Ray Cole
CR2012-007399-001 Zachary William Baxter
CR2012-139607-001 Justin Otis McMahan
CR2012-154880-001 Manuel Antonio Gonzalez

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This Court and the Presiding Criminal Judge previously consolidated the defendants' Motions to Dismiss the Death Penalty ("*Furman* Motion") in these cases for consideration before this Court. The Court originally set Oral Argument on the consolidated motions for April 19, 2013 at 10:30 a.m.

Prior to the April 19 hearing, the Court expressed concern regarding security issues. Specifically, eighteen capital defendants had been joined in the Motion. The Court believed that seating for all the defendants and their counsel would present a significant challenge for court security staff. Moreover, the Motion involves purely issues of law – the Court will not be considering the facts relating to any of the eighteen cases. Accordingly, prior to the April 19 hearing, the Court raised these concerns and asked that each of the defendants indicate whether he would waive his appearance. *See* Minute Entry dated April 8, 2013.

In response to the Court's representation that the scheduled Oral Argument involved no evidentiary matters and stated concerns about security, eight defendants filed a Notice waiving their presence.

Based on its interpretation of the Arizona and United States Constitutions and case law, as applied to the facts of these cases, the pleadings filed in each matter and the nature of the hearing, the Court determined that the remaining individual defendants need not attend the scheduled evidentiary hearing on April 19th and directed that they not be transported. *See* Minute Entry dated April 17, 2013.

At the April 19th hearing, counsel for at least some of the defendants who had declined to waive their presence objected to the absence of their clients. The State joined in this objection, expressing concern that about the constitutionality of the Court's *sua sponte* waiver of the defendants' presence. Although the Court disagreed with the parties' position, the Court reset Oral Argument for May 3, 2013 at 1:30 p.m. and discussed with counsel the logistics of allowing the defendants who had not waived their appearance to appear at the May 3 hearing. There are now a total of nine defendants who have waived their presence and nine defendants who have not waived their presence.

The Court and Court Administration has contacted the jail and confirmed that detention staff can accommodate this reduced number of Defendants in the courtroom. Accordingly,

IT IS ORDERED directing that the individual defendants who have waived their presence are not to be transported for purposes of the May 3rd hearing on the *Furman* Motion.

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IT IS ORDERED directing that the following individual defendants:

CR2010-007912-001	<i>Darnell Reuna Jackson</i>
CR2010-007912-002	<i>Eldridge Auzzele Gittens</i>
CR2011-138281-001	<i>Jason Noonkester</i>
CR2010-007882-001	<i>Jasper Rushing</i>
CR2011-140108-001	<i>Jose Alejandro Acuna Valenzuela</i>
CR2011-150239-001	<i>Ryan William Foote</i>
CR2007-133812-001	<i>Jesus Martinez</i>
CR2010-168096-001	<i>Craig Michael Devine</i>
CR2010-048824-001	<i>James Clayton Johnson</i>

are to be transported to SCT 5B to appear in person at the May 3rd hearing.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>.
Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.